IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE
MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

WP(C).No. 34161 of 2006(P)

PETITIONERS:
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1. K.P.SIVASANKARAN NAIR,
FORMER NON HEREDITARY TRUSTEE,
AZHAKODY DEVI TEMPLE, CALICUT.

2. C.K.RAMAKRISHNAN NAIR,
S/O. LATE GOVINDAN NAIR, CHENGALIKALATHIL HOUSE,
P.O.KUTHIRAVATTOM, CALICUT.

3. THEKKEDATH CHOORAKKATTU KRISHNANKUTTY
NAIR, S/O. LATE NARAYANAN NAIR,
POURNAMI, KASABA AMSOM DESOM, KOZHIKODE TALUK,
KOZHIKODE DISTRICT.

4. T.P.RADHAKRISHNAN, S/O. KUNHIKRISHNAN
NAIR, PUZHIKKOTH HOUSE, THIRUTHIYAD,
CALICUT.

BY ADV. SRI.M.P.ASHOK KUMAR
SRI.M.C.RATNAKARAN

RESPONDENTS:
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1. THE COMMISSIONER,
HR & CE (ADMINISTRATION), KOZHIKODE.

2. PONMILI VELAYUDHAN NAIR, S/O. MEENAKSHI
AMMA, KARAKKOLI HOUSE, THIRUTHIYAD P.O.,
CALICUT-4.

3. PANOLI JAYARAJAN, S/O. LAKSHMIKUTTY
AMMA, KORICHAN PARAMBATH HOUSE,
PUTHIYARA P.O., CALICUT-4.

4. CHERUTHALA KOMALARAJAN,
S/O. MADHAVI AMMA, KOLAPURATH HOUSE,
MANASSERY, KOZHIKODE.

5. KOLLAT RARICHAN PARAMBATH SANKARAN NAIR,
S/O. KALLIANI AMMA, P.O.PUTHIYARA, CALICUT.

6. K.SIVARAMAN,
FORMER CHAIRMAN, BOARD OF TRUSTEES,
AZHAKODI DEVI TEMPLE, CALICUT.

7. PONMILI JAYARAJAN,
FORMER NON HEREDITARY TRUSTEE,
AZHAKODI DEVI TEMPLE, CALICUT.

8. THE DEPUTY COMMISSIONER,
HR & CE (ADMINISTRATION), CALICUT.

ADDL. R9: P. SUKUMARAN, S/O P. BALAKRISHNAN VYDIAR,
PRESENT CHAIRMAN, BOARD OF TRUSTEES,
AZHAKODY DEVI TEMPLE, CALICUT,
RESIDING AT 'SOPNA',
THIRUTHIYAD,
CALICUT-4.

IMPLEADED AS PER ORDER DATED 30/1/2007 IN I.A.42/07.

ADDL. R9 BY ADV. SRI.K.V.SOHAN
R2 TO B5 BY SRI.K.MOHANAKANNAN
R1 BY G.P. M.R. SABU.
SMT.A.R.PRAVITHA
GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN(AG.C.J.) & M.N. KRISHNAN,J.

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W.P.C. NO. 34161 OF 2006

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Dated this the 2nd day of March, 2007.

J U D G M E N T

Krishnan,J.

This writ petition is filed to quash by a writ of certiorari, Ext.P4 passed by the Commissioner, Hindu Religious and Charitable Endowments(Administration), Kozhikode and to declare that the authorities/officers under the Hindu Religious and Charitable Endowments Act have no jurisdiction to decide the question which is a civil dispute. There are also ancillary reliefs claimed.

2. The respondents, namely R2 to R5 along with one Madhavan Nair moved an application before the Deputy Commissioner HR & CE, Kozhikode as O.A.16/03 with a prayer to declare that the families namely Kolat, Ponmili, Panoli and Cheruthala and the eldest male member of the respective thavahi's have to be declared as having entitlement to hold the post of hereditary trustees and for another prayer directing that they are entitled to function as the hereditary trustees of Sri.

Azhakodi Devi Temple, Kozhikode. The respondents in the O.A. resisted the petition on the ground these members do not have any right over the property and it is under the control and management of the HR & CE Act and non hereditary trustees appointed under the Act are in the administration of the temple. The Deputy Commissioner after elaborate enquiry held that the senior-most male members of the said four thavahis have enjoyed the right till 1943 and further held that they have not exercised such right ever since 9/5/1950 or even prior to that and came to the conclusion that the right of said members is lost by adverse possession. Against the said order an appeal was preferred before the Commissioner of HR & CE and he reversed the finding of the Deputy Commissioner holding that hereditary right is a vested one and cannot be divested. It is against that decision the writ petitioners have come up with this writ petition challenging the authority and competency of the authorities under the HR & CE Act to decide the said issue.

3. The point that arises for determination is whether the Authorities under the HR & CE Act have the right to decide the question involved in the matter.

Point:

4. The question that arose for determination before the Authorities is regarding the entitlement of the four senior-most male members of four thavahis entitlement to hold the post of hereditary trustees in Azhakodi Devaswom Devi Temple. Initially, a petition was filed under Section 57(e) of the HR & CE Act and subsequently on a preliminary hearing the Deputy Commissioner found it as maintainable u/s 57(b) and passed orders which was reversed in appeal by the Commissioner. Section 57 of the HR & CE Act deals with the powers of the Deputy Commissioner to decide certain disputes and matters. It reads as,

> "Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into and decide the following disputes and matters....."
> (b) Whether a trustee holds or held office as a hereditary trustee."

It means that the power is granted to the Deputy Commissioner to deal with a situation when a person claims that he holds the post of a trustee or held the post of a hereditary trustee. In common parlance it envisages a situation when one files a petition when his right to continue is challenged by somebody or who has been

forcefully dispossessed and therefore has held the office as a hereditary trustee at some point of time.

5. In this case, from the facts available, it is very clear that the HR & CE is managing the affairs of the Temple through appointment of non-hereditary trustees. The prayer in the original application and the pleadings would reveal that what the petitioners before the Deputy Commissioner wants to establish is their entitlement to hold the post of a hereditary trustee and they wanted a declaration to that effect. Or in other words, by virtue of this application, the petitioners want to get an establishment of a right to hold as hereditary trustees of the temple. The disputed facts would show that admittedly they are out of possession for more than half a century. The larger question, such as, whether by virtue of the abolition of Joint Hindu Family system there is any concept of any karanavaran in the family and the hereditary right which had been invoked about half a century back would lapse by any operation of law. Therefore, one cannot hold that the dispute comes squarely under the words whether trustee holds or held office as a hereditary trustee. Larger rights are to be agitated and resolved and the entitlement itself is in doubt and it can be only declared and resolved by a competent civil Court. Therefore, the

writ petition has to succeed on the question of jurisdiction. Therefore, the writ petition is allowed and the order of the authorities is set aside and it is made clear that the petitioners before the Deputy Commissioner HR & CE have to approach the competent civil Court for declaration of their entitlement to hold the office of trustees of Azhakodi Devi Temple, in case they need so.

K.S. RADHAKRISHNAN,
(AG. CHIEF JUSTICE).

M.N. KRISHNAN, JUDGE.

ul/-